

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF: ) Docket No. CAA-05-2002-0013  
)  
Kent State University ) Proceeding to Assess an  
Kent, Ohio ) Administrative Penalty  
) under Section 113(d) of the  
) Clean Air Act,  
Respondent. ) 42 U.S.C. § 7413(d)  
\_\_\_\_\_ )

Consent Agreement and Final Order

1. Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA), brought this administrative action seeking a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. On September 13, 2002, U.S. EPA filed the complaint in this action against Respondent Kent State University (Kent State). The complaint alleges that Kent State violated certain provisions of the Ohio State Implementation Plan (SIP), two permits to install, and the Title V Permit at its facility in Kent, Ohio.

3. Kent State filed an answer and requested a hearing under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2).

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REGION 5  
COLUMBUS, OHIO

**Stipulations**

4. Kent State admits the jurisdictional allegations in the complaint and neither admits nor denies the factual allegations in the complaint.

5. Kent State waives its right to contest the allegations in the complaint, and waives its right to appeal under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

6. Kent State certifies that it is complying fully with the SIP, its permits to install and its Title V Permit.

7. The parties consent to the terms of this consent agreement and final order (CAFO).

8. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

**Civil Penalty**

9. In consideration of the significant environmental benefits resulting from Respondent's new power plant and Respondent's elimination of its use of coal-fired boilers, and Respondent's agreement to perform a supplemental environmental project (SEP), U.S. EPA agrees to accept a penalty of \$50,000.

10. Kent State must pay the \$50,000 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

11. Kent State must send the check to:

U.S. Environmental Protection Agency  
Region 5  
P.O. Box 70753  
Chicago, Illinois 60673

12. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

Christine Liszewski, (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3509

13. This civil penalty is not deductible for federal tax purposes.

14. If Kent State does not pay timely the civil penalty, or any stipulated penalties due under paragraph 29 below, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the

United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

15. Interest will accrue on any overdue amount from the date payment was due at a rate established under 26 U.S.C. § 6621(a)(2). Kent State will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Kent State will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

#### **Supplemental Environmental Project**

16. Kent State must complete a SEP designed to protect the environment by November 30, 2003.

17. Kent State must complete the SEP as follows:

a. Kent State must restrict the use of approximately 39 acres located in three parcels of land currently owned by Kent State in perpetuity to purposes of land conservation and wetland preservation (Conservation Area). The Conservation Area is located approximately one mile east of the Kent State campus and immediately adjacent to the Kent State outdoor football stadium

and athletic complex. The Conservation Area is part of approximately 350 acres of contiguous undeveloped land in the area of Breakneck Creek.

b. Kent State must obtain a legal description of the Conservation Area.

c. Kent State must grant a formal conservation easement for the Conservation Area and/or a deed restriction which must limit the use of the land in perpetuity to purposes of conservation and wetland preservation. Kent State must record the conservation easement and/or deed restriction with the Portage County Recorder of Deeds.

d. Kent State must develop and implement a plan for the management of the Conservation Area.

e. Kent State must obtain an appraisal of the value of the land comprising the Conservation Area. Kent State estimates that the value of this land is approximately \$499,200.

18. The value of the SEP must be at least \$499,200. This includes the value of the land comprising the Conservation Area and the cost of goods and services used to complete the SEP.

19. Kent State must maintain the Conservation Area for purposes of land conservation and wetland preservation in perpetuity.

20. Kent State agrees that it shall forfeit all future wetland mitigation profits related to the Conservation Area.

21. Kent State certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Kent State further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

22. U.S. EPA may inspect the Conservation Area at any time to monitor Kent State's compliance with this CAFO's SEP requirements.

23. Kent State must maintain copies of the underlying research and data for all reports submitted to U.S. EPA according to this CAFO. Kent State must provide the documentation of any underlying research and data to U.S. EPA within seven days of U.S. EPA's request for the information.

24. Kent State must submit a SEP completion report to U.S. EPA by December 31, 2003. This report must contain the following information:

- a. detailed description of the SEP as completed;
- b. description of any operating problems and the actions taken to correct the problems;
- c. itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services and a copy of the appraisal of the land comprising the Conservation Area;
- d. certification that Kent State has completed the SEP in compliance with this CAFO;

e. description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible); and

f. copies of the legal description of the land comprising the Conservation Area, the recorded conservation easement and/or deed restriction and the management plan for the Conservation Area.

25. Kent State must submit all notices and reports required by this CAFO by first class mail to:

Attn: Compliance Tracker (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

26. In each report that Kent State submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

27. Following receipt of the SEP completion report described in paragraph 24 above, U.S. EPA must notify Kent State in writing that:

a. It has satisfactorily completed the SEP and the SEP report;

b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Kent State 60 days to correct the deficiencies; or

c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 29.

28. If U.S. EPA exercises option b. above, Kent State may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 60 days from U.S. EPA's receipt of Kent State's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Kent State a written decision on its objection. Kent State will comply with any requirements that U.S. EPA imposes in its decision. If Kent State does not complete the SEP as required by U.S. EPA's decision, Kent State will pay stipulated penalties to the United States under paragraph 29 below.

29. If Kent State violates any requirement of this CAFO relating to the SEP, Kent State must pay stipulated penalties to the United States as follows:

a. Except as provided in subparagraph b, below, if Kent State did not complete the SEP satisfactorily according to this CAFO, Kent State must pay a stipulated penalty of \$243,755.

b. If Kent State did not complete the SEP satisfactorily, but U.S. EPA determines that Kent State: (i) made good faith and timely efforts to complete the SEP; and (ii) certified, with supporting documents, that it spent at least 90 percent of the required amount on the SEP, Kent State will not be liable for any stipulated penalty.



c. If Kent State satisfactorily completed the SEP, but spent less than 90 percent of the required amount on the SEP, Kent State must pay a stipulated penalty of \$60,938.

d. If Kent State failed to submit timely the SEP completion report required by paragraph 24 above, Kent State must pay a stipulated penalty of \$200 for each day after the report was due until it submits the report.

30. U.S. EPA's determinations of whether Kent State satisfactorily completed the SEP and whether it made good faith, timely efforts to complete the SEP will bind Kent State.

31. Kent State must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Kent State will use the method of payment specified in paragraphs 10 through 12 above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

32. Any public statement that Kent State makes referring to the SEP must include the following language, "Kent State University undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Kent State University for violations of the Ohio State Implementation Plan and its Title V Permit."

33. Kent State hereby agrees not to claim any funds expended in the performance of the SEP as a deductible business expense for purposes of Federal taxes.

**General Provisions**

34. This CAFO settles U.S. EPA's claims for civil penalties for the violations alleged in the complaint.

35. Nothing in this CAFO restricts U.S. EPA's authority to seek Kent State's compliance with the Act and other applicable laws and regulations.

36. This CAFO does not affect Kent State's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations.

37. This CAFO constitutes an "enforcement response" as that term is used in "U.S. U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Kent State's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

38. The terms of this CAFO bind Kent State, and its successors, and assigns.

39. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

40. Each party agrees to bear its own costs and fees in this action.

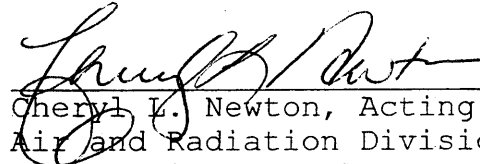
41. This CAFO constitutes the entire agreement between the parties.

U.S. Environmental Protection  
Agency, Complainant

Date:

4/17/03

By:

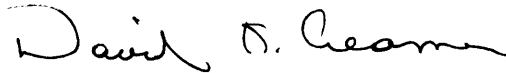
  
Cheryl L. Newton, Acting Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5 (A-18J)

Kent State University, Respondent

Date:

4/9/03

By:

  
David K. Creamer, Vice President  
for Administration  
Kent State University

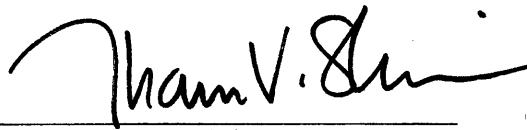
CONSENT AGREEMENT AND FINAL ORDER  
Kent State University  
Docket No. CAA-2002-0013

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk.

Date: \_\_\_\_\_

4.17.03



\_\_\_\_\_  
Thomas V. Skinner  
Regional Administrator  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

CERTIFICATE OF SERVICE

I, Loretta Shaffer, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number CAA-05-2002-0013 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed an original by first-class, postage prepaid, certified mail, return receipt requested, to Kent State University; and correct copies by first-class, postage prepaid, certified mail, return receipt requested, to The Honorable Susan L. Biro and Kent State University's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Dr. Carol A. Cartwright, President  
Kent State University  
Kent, Ohio 44242

Andrew R. Duff, Esq.  
Amer Cunningham Brennan Co., L.P.A.  
Sixth Floor, Key Building  
159 South Main Street  
Akron, Ohio 44308-1322

The Honorable Susan L. Biro  
Chief Administrative Law Judge  
Office of the Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900L  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

U.S. ENVIRONMENTAL  
PROTECTION AGENCY  
REGION 5  
CINCINNATI, OHIO

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on the 21st day of April, 2003.

*Loretta Shaffer for Loretta Shaffer*  
Loretta Shaffer, Secretary  
AECAB (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: 700/0320 0006 0178 3011